IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 165 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEW INDIA ASSURANCE CO LTD.

Versus

AMBALAL B TADVI

Appearance:

1. First Appeal No. 165 of 2002
MR VIBHUTI NANAVATI for appellant No. 1
MR PR THAKKAR for Respondent No. 1
SERVED BY RPAD - (N) for Respondent No. 2

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE C.K.BUCH

Date of decision: 21/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

1. Admit. Mr. P.R.Thakkar, learned advocate, waives service of notice of admission on behalf of respondent claimant. Remaining respondent is not a necessary party in view of the fact that counsel appearing on behalf of respondent - claimant has consented for setting aside the award passed by the Tribunal.

2. Heard Mr. Nanavati for the appellant and Mr.Thakkar,learned advocate, who appeared for the respondent - claimant. During hearing Mr. Thakkar appearing for the respondent - claimant has brought to the notice of this court that original Claim Petition was filed by the widow of Shri Bhaijibhai Tadvi, namely, Jamnaben before the M.A.C.Tribunal, Bharuch against the appellant Insurance Co. and the driver of the vehicle i.e. respondent No.2. As found, during the pendency of the Claim Petition being M.A.C.Petition No.171/89, the widow, namely, Jamnaben has also expired and the Tribunal has proceeded with the said claim Application on the basis of Power of Attorney given by Jamnaben in favour of her son Ambalal Tadvi. The Tribunal has accordingly as per judgment and award dated 4.2.99 allowed the claim petition partly in favour of the respondent claimant by awarding Rs.1,45,000/-- with interest at the rate of 12% from the original opponents jointly and severally and disposed of the said Claim Petition. The Insurance Co. has challenged the said decision by way of preferring this Appeal. It is brought to our notice that on behalf of the respondents, after the disposal of the claim Petition, on 6.11.2001, an application Exh.42 was submitted by the respondents claimants for setting aside the abatement of the main Application and for joining the legal heirs of the deceased supported with an affidavit of respondent No.1. As per the said application, there are 4 heirs of deceased Jamnaben. The said Application was disposed of by the learned Tribunal on 20.4.2002 on the ground that non appeared for the applicant when the matter was called out and the learned Tribunal has observed that the applicant has no interest to prosecute the Application and accordingly dismissed the said Application for want of prosecution.

3. As found, that the appellant Insurance Co. has filed Appeal challenging the main award passed by the Tribunal. Mr. Nanavati appearing for the appellant and Mr. Thakkar appearing for the respondent original

claimant have consented that while disposing of this Appeal by setting aside the award under challenge, necessary direction be given to the Tribunal to dispose of the Claim Case in accordance with law.

4. As observed earlier, after the disposal of the Claim Petition, Application Exh.42 was submitted by the heirs of deceased Jamnaben for bringing heirs on record, which was rejected by the learned Tribunal. In view of the fact that the counsel appearing in the matter had consented for setting aside the award under challenge, in the fitness of things and without expressing anything on the contentions raised in this Appeal, Appeal is allowed. Award passed by the M.A.C.Tribunal in M.A.C.Petition No.171/89 dated 4.2.99 is set aside. The respondents claimants are permitted to move the learned Tribunal by filing application for bringing heirs on record and the Tribunal will examine the same and decide the same in accordance with law from that stage. As the Claim Petition is of 1989, the Tribunal is directed to dispose of the said Petition as expeditiously as possible. Counsel appearing in the matter had assured this court that they will give co-operation to the learned Tribunal in disposing of the Claim Petition. Appeal is accordingly allowed in the above terms, with no order as to costs.

Dt:21.10.2002 (D.K.Trivedi,J)

(C.K.Buch,J)
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